

1 THE HONORABLE BARBARA J. ROTHSTEIN  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9  
10 PARLER, LLC,

Plaintiff,

11 vs.  
12

13 AMAZON WEB SERVICES, INC., and  
14 AMAZON.COM, INC.,

15 Defendants.  
16

Case No. 21-cv-00270-BJR

PLAINTIFF PARLER LLC'S  
RESPONSE TO DEFENDANTS'  
MOTION FOR LEAVE TO AMEND  
NOTICE OF REMOVAL

## I. INTRODUCTION

Plaintiff Parler, LLC respectfully requests that the Court deny Defendants' futile, untimely, and otherwise meritless Motion to Amend, which only compounds the Rule 11 violations in Defendants' original Notice of Removal. Amazon Web Services, Inc. and Amazon.com, Inc. (collectively, "Amazon") contend that the purpose of their Motion to Amend is to "moot" Rule 11 sanctions, but it accomplishes no such purpose.

Defendants knowingly filed a defective and misleading Notice of Removal based on diversity jurisdiction. Amazon’s original Notice specifically alleged Parler LLC’s citizenship, for purposes of diversity, based on the state where Parler is incorporated. Dkt. 1 at 3. Shortly after removing, however, Amazon’s own counsel expressly admitted in correspondence that they knew this was wrong, stating: “we [Amazon’s counsel] recognize the citizenship of an LLC is determined by the citizenship of its members at the time of removal.” Email from A. Kumar to A. Calfo (Mar. 11, 2021), Dkt. 36-1, at 9 (emphasis added). Amazon therefore lacked a good faith legal basis for removal, in violation of Rule 11.

In the same email, Amazon’s counsel also admitted that they knew that the presence or absence of diversity in this case would turn on the citizenship of the Rebekah Mercer 2020 Irrevocable Trust (the “Trust”). The Trust is a member of NDM Ascendant LLC, which, in turn, is a member of Parler. *Id.* Further, Amazon’s counsel implicitly admitted that they had no factual basis to allege diversity based on the citizenship of the Trust. Instead, when Parler requested Amazon’s basis for alleging that the Trust was diverse from Amazon, they stated only: “we have no reason to believe the Trust destroys diversity.” *Id.* Amazon simply ignored the fact that Parler’s corporate disclosure statement identified the Trust as a citizen of Delaware, and Amazon offered no basis on which to dispute that status. Amazon therefore lacked a good faith *factual* basis for removal as well.

1           Amazon filed its misleading Notice of Removal, without a good faith basis, within 24 hours  
 2 after Parler filed its Complaint in state court. Amazon did so for the express purpose of obtaining  
 3 “snap removal” 24 minutes before Amazon was served with the Complaint. Parler subsequently  
 4 put Amazon on notice that its Notice of Removal violated Rule 11, and it offered Amazon the  
 5 opportunity to avoid a Rule 11 motion by stipulating to remand. Letter from A. Calfo to A. Kumar  
 6 (Apr. 7, 2021), Dkt. 36-1, at 12. Instead, Amazon filed this Motion to Amend its Notice of  
 7 Removal, with the express purpose of trying to “moot” Parler’s Rule 11 motion.

8           Amazon’s Motion lacks merit and fails to accomplish Amazon’s stated purpose of trying  
 9 to “moot” Rule 11 sanctions. As an initial matter, the proposed amendment is futile because it  
 10 would not even cure Amazon’s original Notice of Removal in the first place. Amazon’s Amended  
 11 Notice *still* violates this Court’s local rules and the Ninth Circuit’s requirements for pleading  
 12 diversity, as it does not purport to identify the citizenship of Parler’s members. *See, e.g.*, LCR  
 13 101(f). The absence of any such allegations in the Amended Notice also reinforces the conclusion  
 14 that Amazon lacked and continues to lack any good faith basis to plead diversity. And, even  
 15 putting aside the plainly deficient merits of Amazon’s Amended Notice, Amazon’s Motion is  
 16 fundamentally untimely, as it was filed *long* after the removal deadline. For these reasons and  
 17 others set forth below, Amazon’s Motion should be denied.

## 18           II.     FACTUAL AND PROCEDURAL BACKGROUND

19           Plaintiff Parler, LLC originally brought both federal and state law-based claims against  
 20 Amazon in this Court in a complaint filed on January 11, 2021. Case No. 2:21-cv-31-BJR, Dkt. 1  
 21 (the “Federal Action”). On March 2, 2021, at 4:27 p.m., Parler filed a complaint in the Superior  
 22 Court of the State of Washington for King County (the “State Complaint”) bringing solely  
 23 Washington state-based claims against AWS and Amazon.com, Inc. (the “State Action”). On the  
 24 same day, Parler dismissed the Federal Action.

1 Since January 2021, Parler has consistently disclosed to Amazon its status as an LLC and  
 2 the identities of its members. Parler's corporate disclosure statement in the original Federal  
 3 Action—filed almost two months before Amazon's Notice of Removal—put Amazon on such  
 4 notice. Federal Action, Dkt. 3. Parler listed its members as “John Matze and NDM Ascendant  
 5 LLC.” *Id.* at 2. It further listed NDM Ascendant LLC’s members as Rebekah Mercer and the  
 6 Rebekah Mercer 2020 Irrevocable Trust. *Id.* at 2. On March 11, 2021, Parler disclosed that the  
 7 Rebekah Mercer 2020 Irrevocable Trust was a citizen of Delaware because one of its Trustees,  
 8 J.P. Morgan Trust Company of Delaware, was incorporated in, and had its principal place of  
 9 business in, Delaware. *See* Pl.’s Corporate Disclosure Statement, Dkt. 15 (filed under seal).

10 On March 3, 2021, Amazon filed a Notice of Removal of the State Action, 24 minutes prior  
 11 to being served by Parler with the State Complaint, for the purpose of accomplishing a “snap  
 12 removal.” Dkt 1. In its Notice of Removal, Amazon alleged that “Parler is a Nevada limited  
 13 liability corporation with its principal place of business in Henderson, Nevada,” that “Parler  
 14 therefore is a citizen of Nevada,” and that “this case [therefore] satisfies the complete diversity  
 15 requirement because Defendants are not citizens of the same state as Parler. . . .” Dkt. 1, Notice  
 16 of Removal, at 3. Both defendants acknowledge in the Notice of Removal that they are residents  
 17 of both Washington and Delaware. *Id.* at 3.

18 Amazon’s Notice of Removal failed to identify the citizenship of Parler’s members, as  
 19 required by LCR 101(f). Instead, Amazon incorrectly applied a citizenship test for ordinary  
 20 corporations. Notice of Removal, Dkt. 1 at 3.

21 The day after Amazon filed its Notice of Removal, Parler filed a Motion for Remand, (Dkt.  
 22 3), which it later amended on March 22, 2021 (Dkt. 20). In Parler’s correspondence with  
 23 Amazon’s counsel and in the Amended Motion for Remand, Parler identified jurisdictional defects  
 24 in Amazon’s Notice of Removal, namely, that Parler was an LLC, Amazon had applied the wrong  
 25

1 test for determining Parler's citizenship, Parler was *not* solely a Nevada citizen, and Amazon failed  
 2 to identify the citizenship of Parler's members in its Notice. *See* Dkt. 36, at 3-4.

3 In responsive emails, Amazon's counsel openly admitted that they knew the Notice of  
 4 Removal was based on a false premise, stating:

5 The basis for the allegation [of diversity jurisdiction] is Parler's original  
 6 complaint in the federal action, in which it alleged that "Plaintiff Parler LLC is a  
 7 Nevada limited liability corporation with its principal place of business in  
 Henderson, Nevada."

8 That said, we recognize the citizenship of an LLC is determined by the citizenship  
 9 of its members at the time of removal. Parler's corporate disclosure statement in  
 10 the federal action stated that its members are John Matze and NDM Ascendant  
 11 LLC, and that NDM Ascendant LLC's members are Rebekah Mercer and the  
 Rebekah Mercer 2020 Irrevocable Trust. Public reports suggest Ms. Mercer  
 resides in New York, and we have no reason to believe the Trust destroys  
 diversity. . . .

12 Email from A. Kumar to A. Calfo (Mar. 11, 2021), Dkt. 36-1, 9. Amazon did not then identify,  
 13 nor has it since identified, *any basis for affirmatively believing* there is actual diversity in this case.

14 As of April 30, 2021, Amazon had still failed to withdraw or amend its defective Notice of  
 15 Removal, despite having admitted that it used the wrong citizenship test 50 days earlier. Parler  
 16 therefore served Amazon with a draft Motion for Rule 11 Sanctions in order to satisfy Rule 11's  
 17 "safe harbor" provisions. Dkt. 36, Calfo Decl., ¶ 19. Parler made clear that its sanctions motion  
 18 would only be remedied by a stipulated remand. Letter from A. Calfo to A. Kumar (Apr. 7, 2021),  
 19 Dkt. 36-1, at 12-14. Nevertheless, Amazon continues to insist on delaying the inevitability of  
 20 remand with the present motion. Amazon filed its Motion to Amend on May 21, 2021, 79 days  
 21 after filing its Notice of Removal and service of the State Complaint, and on the last day of Rule  
 22 11's 21-day "safe harbor," Dkt. 33. Amazon's proposed, Amended Notice deletes the erroneous  
 23 allegation that Parler was solely a Nevada citizen, but replaces it with the more ambiguous and  
 24 more conclusory allegation that diversity jurisdiction exists because, "on information and belief,  
 25 Parler is neither a citizen of Delaware nor Washington." Dkt. 33, at 11. This amendment does not

fix the fundamental problems with the original Notice. Amazon's Amended Notice *still* does not allege the citizenship of Parler and its members. *See* Pl.'s Mot. at Ex. A. And, Amazon persists in alleging that, "on information and belief, complete diversity of citizenship exists," without citing any basis in law or fact. *Id.*, at 11.

### III. LEGAL STANDARD

Leave to amend a notice of removal should be "denied as futile" when the proposed amended notice is itself defective. *See Allstate Property & Cas. Ins. Co. v. Staats*, 2016 WL 830035, at \*2 (E.D. Wash. 2016); *see also*, e.g., *Hawaii v. Abbott Labs., Inc.*, 469 F. Supp. 2d 835, 842 (D. Haw. 2006) (denying motion to amend notice of removal in part because the amendment "would be futile"). There is a "strong presumption against removal jurisdiction," and the removing party has the burden of establishing that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Id.*

In addition, leave to amend should be denied as untimely if the defendant files the amended notice *after* the deadline for removal, unless the sole purpose of the amendment is to set out more specific grounds for the defendant's original theory of jurisdiction. A removing defendant "may freely amend a notice of removal" *only* if it does so "prior to the expiration of the thirty-day period following defendant's receipt of the complaint." *Farmers Ins. Co. of Wash. v. Ferguson Enterprises, Inc.*, 2010 WL 3788956, at \*1 (E.D. Wash. 2010). After the period for seeking removal has passed, "the notice may be amended *only* to set out more specifically the grounds for removal that already have been stated, albeit imperfectly in the original notice." *Id.* (emphasis added) (quoting 14 C Fed. Prac. & Proc. § 3733"); *see also*, e.g., *Barrow Dev. Co. v. Fulton Ins. Co.*, 418 F.2d 316, 318 (9th Cir. 1969) ("[S]ince removal must be effected by a defendant within 30 days after receiving a copy of the complaint . . . , the removal petition cannot be thereafter

1 amended to add allegations of substance but solely to clarify ‘defective’ allegations of jurisdiction  
 2 previously made.”).

3                                  **IV. ARGUMENT**

4                                  **A. Amazon’s Ambiguous Allegations Do Not Satisfy Amazon’s Burden of Establishing  
 5 Removal Jurisdiction, Rendering the Amendment Futile.**

6                                  Amazon’s proposed, Amended Notice of Removal is clearly defective because it does not  
 7 allege the states of citizenship of Parler’s members. This Court should deny Amazon’s Motion to  
 8 Amend as futile. *See, e.g., Allstate Property & Cas. Ins. Co.*, 2016 WL 830035, at \*2 (denying  
 9 futile motion to amend notice of removal); *Watring v. Suntrust Mortg., Inc.*, 2016 WL 5496575,  
 10 at \*1 (N.D. Ga. 2016) (denying motion to amend notice of removal after finding that amendment  
 11 would be futile); *New Jersey Prop. Liab. Ins. Guar. Ass’n v. Speciality Risk Servs., LLC*, 2016 WL  
 12 8674611, at \*3 (D.N.J. 2016) (noting that proposed amended notice of removal failed to identify  
 13 all members of association, and denying motion to amend after finding that it would be futile);  
 14 *Nichols v. Golden Rule Ins. Co.*, 2010 WL 1769742, at \*5 (D. Colo. 2010) (denying request to  
 15 amend a notice of removal because it would be futile, as the party lacked evidence supporting  
 16 citizenship); *Lehr’s Ironworks, LLC v. Rembrandt Enterprises, Inc.*, 2011 WL 6182092, at \*2  
 17 (M.D. Ala. 2011) (denying motion to amend where amended notice of removal failed to identify  
 18 members of an LLC and thus failed to establish diversity); *Ricard v. Valujet Airlines, Inc.*, 1997  
 19 WL 187391, at \*2 (E.D. La. 1997) (denying motion to amend and granting remand where proposed  
 20 amendment is futile).

21                                  For purposes of diversity jurisdiction, a limited liability corporation is a citizen of all the  
 22 states of which its members are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d  
 23 894, 899 (9th Cir. 2006). Accordingly, the Ninth Circuit has specifically held that defendants  
 24 “failed to satisfy their burden to show complete diversity between the parties” where one of the  
 25 parties was an LLC and the defendants’ “notice of removal fails to state the citizenship of the . . .

[LLC's] members . . . ." *Lindley Contours, LLC v. AABB Fitness Holdings, Inc.*, 414 F. App'x 62, 64 (9th Cir. 2011) (finding, sua sponte, that party who had removed case failed to satisfy its burden when it failed to allege the citizenship of all members of defendant limited liability partnerships and limited liability corporations). This requirement to plead the states of citizenship of the members of an LLC is also enshrined in this Court's local rules. *See LCR 101(f).*

Amazon's original Notice of Removal failed to satisfy this requirement because it erroneously pled that Parler is solely a citizen of Nevada based on its own state of residence and incorporation. Notice of Removal, Dkt. 1 at 3. Amazon's counsel admitted to this defect in their correspondence with Parler's counsel. Email from A. Kumar to A. Calfo (Mar. 11, 2021), Dkt. 36-1, at 9. At the same time, they admitted that Parler's citizenship is based on the citizenship of its members. *Id.* Yet, Amazon *still* does not identify the citizenship of Parler's members in its proposed, Amended Notice of Removal. *See Ex. A to Pl.'s Mot.*, at 3. Instead, Amazon's revisions to the Notice only sought to make it *more ambiguous*: The Amended Notice deletes the original Notice's specific allegations regarding the State(s) in which Parler is a citizen, and replaces them with the generic statement that, "[o]n information and belief, Parler is neither a citizen of Delaware nor Washington." *Id.*

Even if this were the only defect in Amazon's Amended Notice, it would render the notice deficient, standing alone. The Ninth Circuit's decision in *Lindley* is instructive. There, on appeal from the District of Oregon, the defendants filed an amended notice of removal asserting diversity jurisdiction and alleging that the members of the defendant limited partnerships and limited liability corporations were "not citizens of Oregon." 414 Fed. Appx. 62, at 64-65. The amended notice did not, however, specifically identify the states in which the defendants' members were in fact citizens. *Id.* The Ninth Circuit therefore held that the "conclusory statements" in the amended notice were "insufficient," and ordered remand based on the defendants' failure to meet their "burden to establish complete diversity." *Id.* This decision, although unpublished, is highly

1 persuasive and consistent with prior Ninth Circuit precedent. *See, e.g., Kanter v. Warner-Labert*  
 2 *Co.*, 265 F.3d 853 (9th Cir. 2001) (holding a defendant's notice of removal was defective because  
 3 it did not affirmatively allege the state of citizenship of its co-defendants, but merely alleged that  
 4 they were not citizens of California).

5 District courts in this Circuit have reached the same result. For example, in *Airtex Prods., L.P. v. Am. Home Assur. Co.*, 2011 WL 4527436 (C.D. Cal. 2011), the defendant's notice of  
 6 removal asserted that the parties were citizens of different states, but failed to specifically identify  
 7 the states of citizenship of the members of the plaintiffs, which were a limited partnership and a  
 8 limited liability company. *Id.* at \*1. The court ordered remand on this basis alone. As the court  
 9 explained, the notice of removal "failed even to identify the members and partners of the respective  
 10 Plaintiffs, much less to establish the citizenship of each individual member and partner," and thus  
 11 "Defendant's bare assertions as to the citizenship of the parties fall short of meeting Defendant's  
 12 burden to establish the propriety of removal." *Id.*

14 This defect in Amazon's Amended Notice of Removal should be the end of the story. The  
 15 Amended Notice is legally insufficient because it does not even purport to identify the states of  
 16 citizenship of Parler's members. Amazon's Motion cites no authority to the contrary, presumably  
 17 because there is none.

18 **B. Amazon's Attempt to Rely on Allegations of Diversity on "Information and Belief,"  
 19 Without a Good Faith Basis, is Likewise Futile.**

20 Moreover, to the extent Amazon now tries to plead that "Parler is neither a citizen of  
 21 Delaware nor Washington," its amended notice is also futile because it is pled on "information and  
 22 belief." *See Ex. A to Pl.'s Mot.*, at 3. As recently as this year, district courts in this Circuit have  
 23 recognized that a "Defendant's allegation of Plaintiff's citizenship, made on information and  
 24 belief, is insufficient to establish Plaintiff's citizenship." *Bratschie v. Travelers Prop. Cas. Co. of*  
 25 *Am.*, 2021 WL 1381234, at \*1 (C.D. Cal. 2021); *see also, e.g., Washington v. Mercedes-Benz USA*,

1 *LLC*, 2020 WL 2991537, at \*2 (C.D. Cal. 2020) (similar); *Balandra v. Kindred Healthcare*  
 2 *Operating, Inc.*, 2016 WL 6953430, at \*1 (C.D. Cal. 2016) (similar). This is a separate,  
 3 independently sufficient reason why the Amended Notice is defective and futile.

4 Amazon first tries to escape this result by relying on *Carolina Cas. Ins. Co. v. Team Equip.*  
 5 *Inc.*, 741 F.3d 1082 (9th Cir. 2014), but Amazon’s reliance is misplaced. Amazon suggests that  
 6 *Carolina Casualty* permits it to allege citizenship on “information and belief,” *id.* at 1088, but  
 7 *Carolina Casualty* is inapposite because it did not arise in a removal setting. Rather, *Carolina*  
 8 *Casualty* involved a plaintiff who, in connection with a complaint that it chose to file in federal  
 9 court, lacked the specific details of the defendants’ citizenship. *Id.* at 1084. The district court *sua*  
 10 *sponte* dismissed the plaintiff’s complaint after it failed to allege the citizenship of any members  
 11 of an LLC, and alleged the residences, rather than citizenship, of other individual defendants. *Id.*  
 12 The Ninth Circuit reversed. *Id.* at 1086. In contrast, here, it is Amazon, a defendant, that is seeking  
 13 to remove a case that was filed by Parler in state court.

14 Since *Carolina Casualty*, courts in this Circuit have continued to hold that allegations upon  
 15 “information and belief” are insufficient in the removal context. For example, in *Washington v.*  
 16 *Mercedes-Benz*, the court specifically distinguished *Carolina Casualty* because that case “did not  
 17 implicate the presumption against removal jurisdiction,” and then held that an allegation of  
 18 diversity of citizenship upon “information and belief” is insufficient to support removal. See  
 19 *Washington v. Mercedes-Benz USA, LLC*, 2020 WL 2991537, at \*2 (C.D. Cal. 2020); *see also*,  
 20 *e.g.*, *Balandra v. Kindred Healthcare Operating, Inc.*, 2016 WL 6953430, at \*1 (C.D. Cal. 2016)  
 21 (jurisdictional allegations in notice of removal “based on information and belief are insufficient to  
 22 confer jurisdiction”) (citing *America’s Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072,  
 23 1074 (7th Cir. 1992), which noted that allegations based on “to the best of my knowledge and  
 24 belief” are insufficient in a removal petition). The same result is appropriate here.

1       Further, Amazon's interpretation of *Carolina Casualty* is particularly unreasonable  
 2 because it would put the Ninth Circuit in conflict with itself. The Ninth Circuit has rejected past  
 3 bids to allow jurisdictional allegations in a notice of removal to be made solely "on information  
 4 and belief," due to the presumption against removal. For example, in *Valdez v. Allstate Ins. Co.*,  
 5 372 F.3d 1115 (9th Cir. 2004), the Ninth Circuit affirmed a remand order after the defendant had  
 6 alleged in its notice of removal that "upon information and belief . . . the amount in controversy .  
 7 . . exceeds \$75,000," finding such conclusory allegations to be insufficient. *Id.* at 1117. The Ninth  
 8 Circuit's decision in *Carolina Casualty* did not purport to overrule *Valdez* or similar cases. Thus,  
 9 in order to adopt Amazon's interpretation of *Carolina Casualty*, this Court would not only have to  
 10 reject the subsequent district court decisions in *Washington v. Mercedes-Benz USA* and *Balandra*  
 11 *v. Kindred Healthcare Operating, Inc.*, which it should not do—it would also have to find that the  
 12 Ninth Circuit's ruling in *Carolina Casualty* was inconsistent with its own *Valdez* decision, which  
 13 is simply not reasonable.

14       Next, Amazon similarly misplaces its reliance on *Ehrman v. Cox Commc'ns, Inc.*, 932 F.3d  
 15 1223 (9th Cir. 2019). There, the Ninth Circuit held, in the context of a class action lawsuit brought  
 16 under Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), in which the defendants'  
 17 jurisdictional allegations were unchallenged, that "[a] party's allegation of *minimal* diversity may  
 18 be based on information and belief." *Id.* at 1225 (emphasis added). But once again, in that context,  
 19 there was no presumption against jurisdiction. The Ninth Circuit expressly recognized that  
 20 removal under CAFA is not like ordinary removal, because the legislative intent of CAFA was to  
 21 make it *easier* to remove class actions to federal court. *Id.* Indeed, the Court specifically qualified  
 22 the scope of its holding when it noted that "*no antiremoval presumption* attends cases invoking  
 23 CAFA." *Id.* (emphasis added). Thus, once again, Amazon's reliance on *Ehrman* is misplaced  
 24 because it is trying to leverage caselaw in which there was *no* presumption against jurisdiction,  
 25 while ignoring that there is such a presumption against jurisdiction in this case. Further, Amazon

1 ignores that the holding in *Ehrman* was limited to the narrow context in which the plaintiff did not  
 2 challenge the factual basis for the defendant's allegations, which is not the case here.

3       In sum, the conclusory allegations on "information and belief" in Amazon's Amended  
 4 Notice are insufficient, and permitting the amendment would be futile for this additional reason.  
 5 Moreover, it bears repeating that Amazon's Motion provides no factual basis whatsoever for its  
 6 ostensible "information and belief" that Parler is not a citizen of Delaware. Even in a context  
 7 where a pleading on information and belief is appropriate, the pleading party "must still have a  
 8 Rule 11 good faith basis for making his allegations." *Collins v. County of Alameda*, 2021 WL  
 9 254262, at \*8 (N.D. Cal. 2021). Parler has repeatedly asked Amazon to identify its factual basis  
 10 for contending that Parler is not a citizen of Delaware, and Amazon has never provided one. *See*  
 11 Email from A. Kumar to A. Calfo (Mar. 11, 2021), Dkt. 36-1, 6. Instead, Amazon has requested  
 12 discovery in the hope that it may *find* a basis for this allegation. *See* Dkt. 28, 5-6. In its brief  
 13 requesting such discovery, Amazon openly admitted that it does *not* have "the information needed  
 14 to determine the citizenship of the [T]rust," and thus of Parler. *Id.* at 5. As a result, Amazon  
 15 plainly lacks a good faith basis to justify its pleading "on information and belief" in the first place.

16 **C. Amazon's Amended Notice Is Still Defective for the Same Reasons Previously  
 17 Articulated in Plaintiff's Amended Motion for Remand.**

18       Amazon's Amended Notice is also futile for all the reasons previously identified in Parler's  
 19 Amended Motion to Remand (Dkt. 20) and Reply in support thereof (Dkt. 30). The Amended  
 20 Notice does not cure *any* of the grounds for remand articulated in Parler's remand motion. For  
 21 example, Amazon's new Notice continues to rely on the same "snap removal" theory as the  
 22 original, which has been disfavored by the majority of courts. Indeed, after Parler filed its Reply  
 23 (Dkt. 30), another judge in the Western District of Washington expressly rejected the "snap  
 24 removal" theory, holding that it is "not consistent with the text, history and purpose of the Forum  
 25 Defendant Rule." *Pratt v. Alaska Airlines, Inc.*, 2021 WL 1910885, at \*5 (W.D. Wash. 2021).

1           Amazon's Motion once again illustrates the problems with its original snap removal.  
 2 Amazon rushed to make false jurisdictional allegations to establish a beach head in federal court,  
 3 less than 24 hours after it became aware of the State Complaint. Amazon is now futilely trying to  
 4 amend its way out of those false allegations by making its Notice of Removal more vague and  
 5 ambiguous. Had Amazon taken the time to conduct a reasonable investigation into Parler's  
 6 citizenship at the outset, however, it would not only have realized that there was no diversity in  
 7 this case—it also would have given Parler sufficient time to serve Amazon with the State  
 8 Complaint before Amazon filed its Notice of Removal. As it was, the gap between the filing of  
 9 the Notice and service of the State Complaint was only 24 minutes.

10           Amazon should not be rewarded for failing to take the time to conduct a reasonable  
 11 investigation in the first instance. Allowing such litigation tactics would create a moral hazard, as  
 12 litigants will rush to achieve "snap removal" at the expense of a reasonable investigation into  
 13 subject matter jurisdiction, just as Amazon did in this case.

14 **D. Amazon's Motion to Amend is an Untimely Attempt to Resurrect its Improper Notice  
 15 of Removal After it Rushed to Effectuate its "Snap Removal."**

16           As set forth above, the Court should deny Amazon's Motion as futile. It is clear that  
 17 Amazon is just attempting to amend its Notice of Removal by deleting specific allegations that it  
 18 knew were erroneous, only to replace them with more ambiguous and conclusory allegations that  
 19 do not satisfy this Court's pleading rules.

20           Moreover, Amazon's Amended Notice not only fails on the merits—it should also be  
 21 denied as untimely. After the deadline for removal has passed, a notice of removal may only be  
 22 amended to *clarify* defective jurisdictional allegations. *Barrow*, 418 F.2d at 317. Amazon filed  
 23 this Motion 79 days after filing its original Notice of Removal and after service of the state court  
 24 Complaint, both of which occurred on the same day. Dkt. 33. Thus, Amazon missed the standard  
 25 30-day removal deadline by 49 days. *Farmers Ins. Co. of Washington v. Jacobsen*, 2006 WL

1 8455000, at \*1 (W.D. Wash. June 7, 2006). Even more striking, Amazon does not dispute that it  
 2 would have been prohibited from removing this case after it was served with the state court  
 3 Complaint on March 3, 2021, under the Forum Defendant Rule. 28 U.S.C. § 1441(b); *see also*,  
 4 *e.g.*, *Spencer v. U.S. Dist. Ct. for N. Dist. of Ca.*, 393 F.3d 867, 870 (9th Cir. 2004). Amazon's  
 5 Motion to Amend missed that deadline by 79 days.

6 After the removal deadline has passed, “the notice may be amended *only* to set out *more*  
 7 *specifically* the grounds for removal that already have been stated, albeit imperfectly in the original  
 8 notice.” *Farmers Ins. Co.*, 2010 WL 3788956, at \*1 (emphasis added). Nevertheless, Amazon's  
 9 belated Motion to Amend does not seek to clarify anything. Instead, it seeks to delete Amazon's  
 10 *specific* (erroneous) allegations about the State(s) of Parler's citizenship, and replace them solely  
 11 with *ambiguous* (yet still erroneous) allegations about where Parler ostensibly is *not* a citizen. It  
 12 is clear that the sole purpose of the changes in the Amended Notice of Removal is to achieve a  
 13 higher level of ambiguity in order to try to avoid sanctions for specific false statements in the  
 14 original Notice.

15 None of the authority cited by Amazon supports its contention that a notice of removal may  
 16 be amended more than 30 days after the complaint is served to make jurisdictional allegations *less*  
 17 clear and *more* conclusory. All the cases relied upon by Amazon are distinguishable because they  
 18 involved jurisdictional peccadillos that were *actually* clarified by the party seeking to amend their  
 19 notice of removal. For example, in *McLeod v. AMICA Gen. Agency*, 2015 WL 13145350 (W.D.  
 20 Wash. 2015), the defendant simply failed to file a one-page cover sheet required by LCR 101(b),  
 21 which the Court was willing to overlook because “the alleged defect has no impact on the Court's  
 22 power or ability to adjudicate the case.” *Id.* at \*4. Similarly, in *Nicholson v. Thrifty Payless, Inc.*,  
 23 2012 WL 4320785 (W.D. Wash. 2012), the Court simply permitted a defendant to belatedly  
 24  
 25

1 comply with the requirement to file “copies of all records and proceedings” from State court.<sup>1</sup> *Id.*  
 2 at \*1. By contrast, none of the cases cited by Amazon permitted a party to wait until long after the  
 3 deadline for removal had passed, then file an Amended Notice that simply deleted specific  
 4 erroneous allegations and replaced them with ambiguous, conclusory statements.

5 The Court should not countenance Amazon’s tactics and, at a minimum, it should deny  
 6 Amazon’s Motion as untimely. Amazon made a snap decision to “snap remove” this case to  
 7 federal court, 24 minutes before it was served with the state court Complaint. It did so based on a  
 8 premise that it later admitted was false. Then, it waited until 79 days after it was served with the  
 9 state court Complaint, at which point it moved for leave to file an Amended Notice of Removal in  
 10 which it simply tried to make its allegations *more* ambiguous and *more* conclusory, in an explicit  
 11 attempt to “moot” Parler’s sanctions motion. Amazon’s Motion should be denied.

## 12                   V.     CONCLUSION

13                   Amazon’s Motion to Amend should be denied because it is both futile and untimely.  
 14 Moreover, the allegations upon “information and belief” in Amazon’s Amended Notice of  
 15 Removal continue to lack a good faith basis. Amazon’s own Motion did not even purport to  
 16 identify a good faith basis for these amended allegations. Accordingly, Amazon’s stated goal in  
 17 bringing this motion, which was to “moot” Parler’s Rule 11 motion, likewise fails.

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 24                   <sup>1</sup> The Court noted in *dicta* that it “regularly allows parties to remedy defects in the Notice of Removal, such as a failure  
 25 to identify the citizenship of an LLC,” but nowhere did the Court consider the *timeframe* in which such an amendment  
                      must be made. *Id.* Further, Amazon’s Amended Notice does not actually “identify the citizenship of an LLC,” so it  
                      does not fall within the *dicta* in *Nicholson* in the first place.

DATED this 11th day of June, 2021.

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PLAINTIFF PARLER LLC'S RESPONSE TO  
DEFENDANTS' MOTION FOR LEAVE TO AMEND  
NOTICE OF REMOVAL  
(Case No. 2:21-cv-00270-BJR) - 15

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